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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 16 1993

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IN RE APPLICATIONS OF:

MM DOCKET NO. 93-42

MOONBEAM, INC.
and
GARY E. WILLSON

Calistoga, California

DATE OF HEARING: July 21, 1993

VOLUME: 2

PLACE OF HEARING: Washington, D.C.

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FREE STATE REPORTING, INC.
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In re Applications of:)

MOONBEAM, INC.)

AND)

GARY E. WILLSON)

Calistoga, California)

MM DOCKET NO. 93-42

The above-entitled matter came on for hearing pursuant to
notice before Edward Luton, Administrative Law Judge, at 2000
L Street, N.W., Washington, D.C., in Courtroom No. 4, on
Wednesday, July 21, 1993, at 10:02 a.m.

APPEARANCES:

On behalf of Gary E. Willson:

JAMES A. GAMMON, Esquire
A. WRAY FITCH III, Esquire
Gammon and Grange, P.C.
Seventh Floor
8280 Greensboro Drive
McLean, Virginia 22102-3807

On behalf of the Moonbeam, Inc.:

LEE W. SHUBERT, Esquire
SUSAN H. ROSENAU, Esquire
Haley, Bader and Potts
Suite 900
4350 North Fairfax Drive
Arlington, Virginia 22203-1633

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Mary F. Constant				
By Mr. Shubert	17		156	
By Mr. Gammon		36		
By Mr. Fitch	25 (Voir Dire)			

E X H I B I T S

<u>Moonbeam, Inc.</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
1	16	18	
2	16	33	
<u>Willson</u>			
2	95		106
3	106		113
4	150	153	
5	151	153	

Hearing Began: 10:02 a.m.

Hearing Ended: 3:05 p.m.

Lunch Began: 12:35 p.m.

Lunch Ended: 1:48 p.m.

P R O C E E D I N G S

(10:02 a.m.)

JUDGE LUTON: Appearances, please.

MR. SHUBERT: Lee Shubert and Susan Rosenau of the firm of Haley, Bader and Potts on behalf of Moonbeam.

JUDGE LUTON: Thank you.

MR. FITCH: Your Honor, Wray Fitch and James Gammon, whose appearance I'd like to note for the record today on behalf of Gary Willson, for the firm Gammon and Grange.

JUDGE LUTON: All right. Thank you. We will proceed in docket order. That means that Moonbeam's case comes first. Are you prepared to proceed?

MR. SHUBERT: We are prepared to proceed, Your Honor. I have a couple of procedural items if I might --

JUDGE LUTON: All right, you may.

MR. SHUBERT: -- first of all. First of all, I wanted to note for the record that publication by Moonbeam in connection with the hearing designation order has been accomplished and I have copies of the proof of publication, which I will circulate.

JUDGE LUTON: All right.

MR. SHUBERT: If it's okay with you I'll do it off the record or when I circulate some other things.

JUDGE LUTON: That's fine.

MR. SHUBERT: And I'm not providing copies for the reporter. I don't want to make it an exhibit to the case, I

1 just want to officially note that it has been accomplished.

2 JUDGE LUTON: Okay.

3 MR. SHUBERT: Second, discovery is what we need.

4 Second, Your Honor, I wanted to note for the record that
5 pursuant to the order that you issued, I believe, on July 12,
6 1993, that we are providing at least preliminarily because of
7 the time constraints that we've had, these are documents that
8 are available to us that are responsive to certain of the
9 points or certain of the documents that were be to -- were to
10 be produced by Moonbeam in connection with the issue that was
11 added by your order of July 9, 1993, and they include a
12 statement from Alex Brown and Sons; a balance sheet of Mary F.
13 Constant dated August 30, 1991; a June 1993 statement of
14 account from Alex Brown; a June 1993 balance sheet; and the
15 most current -- correction. That's already provided. But
16 these are documents that are available to us today.

17 JUDGE LUTON: All right.

18 MR. SHUBERT: In order to try to expedite the
19 proceeding a little bit. Next, Your Honor, I would like to
20 truly beg your indulgence if I may. And that is to offer to
21 you and ask for you to consider a Request for Leave to Appeal
22 your order that was issued on July 9th, adding the issues. I
23 realize from a timing standpoint we are untimely, but I would
24 note, as I've noted in the submission, that your order was
25 released on the 9th, apparently not mailed until the 12th

1 | because it was bundled with some other documents that were
2 | released on the 12th and not received by us until the 16th,
3 | which would have been after the time frame.

4 | And I think what I'm looking at here, Your Honor, if
5 | you would indulge us is to simply point out the fact that I
6 | think that we failed to make clear what the circumstances were
7 | and I think what the issue boils down to is a semantical
8 | argument over location or the word source, because basically
9 | what we've got now is a -- not a question of whether funds
10 | were in the teapot or the coffeepot, but clear evidence that
11 | was presented that showed that the funds, indeed, were in the
12 | coffeepot. The question is is whose handle is -- whose hand
13 | is on the coffeepot? And I think what we are trying to make
14 | clear is that all along it has been Mrs. Constant's hand that
15 | has been on the coffeepot.

16 | And I would beg your indulgence to at least give
17 | consideration to this item because I think that there is going
18 | to be ultimately a -- an egregious wasting of all resources of
19 | the Commission and of the parties in order to try this issue.
20 | I would note too in passing that when we did the discovery six
21 | weeks ago and did the depositions, I permitted Mr. Fitch to
22 | examine on the source of the funds and didn't object to any of
23 | the questions in that regard. So we at least had a
24 | preliminary introduction into what the factual evidence was.

25 | JUDGE LUTON: All right. And the, the point of the

1 appeal is that --

2 MR. SHUBERT: That -- there are two points actually,
3 Your Honor, if I may. Excuse me for interrupting.

4 JUDGE LUTON: Yes.

5 MR. SHUBERT: One, that there is a -- it presents a
6 novel question of law because the amendment itself which was
7 subject to the enlargement petition was something that was
8 considered by the staff in the hearing designation order. And
9 in fact addition of the issue at this time may be precluded by
10 the annex decision.

11 JUDGE LUTON: The, the amendment? Which amendment?
12 I'm having some trouble remembering -- oh, the amendment
13 which --

14 MR. SHUBERT: This was an amendment that was dated
15 February 27, 1992, and submitted --

16 JUDGE LUTON: This is the one in which the source
17 was identified as Ms. Constant --

18 MR. SHUBERT: Correct.

19 JUDGE LUTON: -- and --

20 MR. SHUBERT: That's correct.

21 JUDGE LUTON: -- she was stated to be a self-
22 financier. That's the amendment.

23 MR. SHUBERT: In essence yes, Your Honor, because it
24 was -- that was the last day of an amendment as a matter of
25 right. And essentially what we were doing was clarifying the

1 information, realizing that when we had prepared the
2 application, there was an incorrect response to the question.
3 And if you go through you'll see that there are several items
4 in that amendment that were clarified.

5 JUDGE LUTON: The incorrect response to what
6 question?

7 MR. SHUBERT: This would be the financial --

8 JUDGE LUTON: Financial funds.

9 MR. SHUBERT: The identification of the, the, the
10 per-- the location of the funds. That's correct.

11 JUDGE LUTON: Oh, so is that an admission that a
12 mistake was made in the way that was stated in the
13 application?

14 MR. SHUBERT: If it was -- that it -- not that it
15 was a mistake, Your Honor, but that the person who was
16 identified is the investment representative at Alex Brown and
17 is, is the person that she contacts whenever she wants to move
18 those funds that she has in the accounts that are held by Alex
19 Brown.

20 JUDGE LUTON: Uh-huh.

21 MR. SHUBERT: And that, in fact, the accounts have
22 not changed.

23 JUDGE LUTON: All right. Well, it certainly -- well
24 -- the change was most noticeable. The change between the
25 response to the question in the original application and in

1 the amendment. It certainly gave the appearance of a, of a
2 change and I think you just agreed that that was the case.

3 MR. SHUBERT: At the threshold it was inaccurate --
4 inartfully answered.

5 JUDGE LUTON: And that it was not, it was not a, not
6 a -- an unreasonable thing to do on my part to set the matter
7 for hearing. It looked like a change.

8 MR. SHUBERT: Except for the fact -- I mean, in part
9 it seems like we're being penalized for, for providing the
10 accurate information.

11 JUDGE LUTON: Well, the accurate information in your
12 view was to state in response to a question seeking the source
13 of funds, to state the location of the funds.

14 MR. SHUBERT: Yes.

15 JUDGE LUTON: That was accurate you think?

16 MR. SHUBERT: Well, yes, but the question -- I go to
17 the semantics. The difference between source and location.

18 JUDGE LUTON: Uh-huh.

19 MR. SHUBERT: I think if you look at the derivation
20 of the words, they're pretty close.

21 JUDGE LUTON: What caused Moonbeam to change its
22 response in the amendment?

23 MR. SHUBERT: As I said, we were preparing a
24 clarifying amendment and there were several items in there
25 that were clarified.

1 JUDGE LUTON: And you recognized the need for
2 clarification --

3 MR. SHUBERT: Yes.

4 JUDGE LUTON: -- certainly, so then the matter
5 wasn't as clear as -- well, I, I think that's enough. I don't
6 really have anymore. I will --

7 MR. FITCH: Can we -- do you want to hear from us on
8 this issue?

9 JUDGE LUTON: I, I don't think so. Are you asking
10 to be permitted to file a response to the pleading here?

11 MR. FITCH: Oh, absolutely.

12 JUDGE LUTON: Or you just want to make argument now?

13 MR. FITCH: Well, I want to file a response. We --
14 this has obviously just been thrown at us as it has on the
15 court.

16 JUDGE LUTON: Well, I don't -- I really don't, don't
17 need a -- argument on the thing right now.

18 MR. FITCH: All right.

19 JUDGE LUTON: You're asking for a -- to be permitted
20 to make a, a written response to the request for permission to
21 appeal and which without such permission you'd have no right
22 to make such a response. I would only want a response if,
23 after reading this I determine that a response might be useful
24 to me. I won't grant that permission to make a response at
25 this point. I will consider that the request has been made

1 and I'll rule on it in due course.

2 MR. SHUBERT: Thank you, Your Honor, very much.

3 Next, I've got amendments that we will be filing today, which
4 update the information regarding Mrs. Constant's husband's
5 construction permit. This is, in part, responsive to the last
6 -- in one of many enlargement petitions filed by Mr. Willson.
7 I just --

8 MS. ROSENAU: We, we have an extra if you'd like it.

9 MR. SHUBERT: And I think that's it. At that point,
10 Your Honor -- at this point, Your Honor, I would like to call
11 to the stand Mary F. Constant. And let the record reflect,
12 Your Honor, that I am providing to the court reporter an
13 original and two copies of the direct case exhibit of
14 Moonbeam, Inc., copies of which have heretofore been
15 previously exchanged to the parties and to Your Honor. The
16 direct case of Moonbeam consists of two documents, Your Honor,
17 the first being denominated Moonbeam, Inc. Hearing Exhibit No.
18 1, which is a three-page document and the second being
19 Moonbeam, Inc. Hearing Exhibit No. 2, Your Honor, which is a
20 five-page document and I would request at this time that those
21 documents be marked for identification.

22 JUDGE LUTON: All right. They will be marked 1 for
23 identification and 2 for identification.

24 (Whereupon, the documents referred to
25 as Moonbeam, Inc. Exhibit Nos. 1 and

1 2 were marked for identification.)

2 Whereupon,

3 MARY F. CONSTANT

4 having been first duly sworn, was called as a witness herein
5 and was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SHUBERT:

8 Q Ms. Constant, do you have a copy of the -- your
9 direct case in front of you?

10 A No, I don't.

11 MR. SHUBERT: Your Honor, I'm placing before the
12 witness a copy of the direct case for Moonbeam.

13 BY MR. SHUBERT:

14 Q Ms. Constant, could I ask you to look at page 3 of
15 Hearing Exhibit No. 1? Is that your signature there?

16 A Yes, it is.

17 Q And would you please also look at page 5 of this
18 exhibit -- of Exhibit No. 2? And is that your signature
19 there?

20 A Yes, it is.

21 Q Are there any corrections to be made to these
22 exhibits?

23 A No.

24 Q Have you reviewed the exhibits prior to the time you
25 signed them?

1 A Yes, I have.

2 MR. SHUBERT: Your Honor, at this point in time I
3 would like to request the admission into evidence of Moonbeam
4 Hearing Exhibit No. 1 and Moonbeam Hearing Exhibit No. 2.

5 JUDGE LUTON: Any objections to 1 for
6 identification?

7 MR. FITCH: Not for identification, Your Honor.

8 JUDGE LUTON: Any objection --

9 MR. FITCH: Into evidence, Your Honor, or for --

10 JUDGE LUTON: No, into evidence. I --

11 MR. FITCH: I'm sorry.

12 JUDGE LUTON: My reference to it as 1 for
13 identification --

14 MR. FITCH: Right.

15 JUDGE LUTON: -- is simply an identifier. I'm
16 asking for evidentiary objections to 1 for identification.

17 MR. FITCH: Yes, Your Honor. One -- on Exhibit 1,
18 Your Honor, I have no objection to Exhibit 1.

19 JUDGE LUTON: All right. Then 1 for identification
20 is received as Moonbeam's Exhibit 1.1

21 (Whereupon, the document referred to
22 as Moonbeam Exhibit No. 1 was
23 received into evidence.)

24 JUDGE LUTON: Objections to 2 for identification?

25 MR. FITCH: Yes, Your Honor.

1 JUDGE LUTON: All right.

2 MR. FITCH: Exhibit 2, page 1, line 8, that first
3 sentence in paragraph 2, I have no objection to this
4 information being reported for informational purposes.
5 However, I do object to the use of this information concerning
6 present local residence in any effort to obtain a comparative
7 advantage for present local residence as opposed to future
8 local residence. And the basis of my objection is premised on
9 comparative upgrading, Your Honor. Or for past local
10 residence, Your Honor.

11 JUDGE LUTON: Would you state that objection for me
12 again? I'm not sure that I follow that.

13 MR. FITCH: Yeah. Let me, let me start it from the
14 other way.

15 JUDGE LUTON: All right.

16 MR. FITCH: In the, in the application at
17 integration and diversification statement filed by Moonbeam,
18 they, they indicated that they would seek credit for future
19 local residence. I have no objection to the extent that this
20 information is used only for credit being sought for future
21 local residence. I object --

22 JUDGE LUTON: As opposed to current residence.

23 MR. FITCH: As opposed to current --

24 JUDGE LUTON: I see.

25 MR. FITCH: -- local residence --

1 JUDGE LUTON: I see.

2 MR. FITCH: -- or the extent that this could be
3 argued as being past local residence.

4 JUDGE LUTON: Okay. I -- do you wish to respond,
5 Mr. Shubert? Or is that your intention? It would seem to be
6 attempted solely to have application to the premise of -- in
7 the integration statement, to future local residence because
8 the second sentence says that this is a fulfillment of that
9 commitment.

10 MR. FITCH: Precisely, Your Honor.

11 JUDGE LUTON: It would seem to me to be directed
12 only to the premise of future local residence, which can be
13 credited.

14 MR. FITCH: By that --

15 JUDGE LUTON: I think I understand your objection
16 and I think that we're all in agreement about the use -- the
17 proper use to be made of that information.

18 MR. FITCH: Fine.

19 JUDGE LUTON: Um-hum.

20 MR. FITCH: Then I would jump down to line 13.

21 There's a sentence there that reads, Ms. Constant's property
22 includes a vineyard which her husband operates. I would move
23 to strike that as irrelevant.

24 MR. SHUBERT: I have no objection, Your Honor.

25 JUDGE LUTON: All right. I'll strike it.

1 MR. FITCH: Your Honor, moving now to Hearing
2 Exhibit No. 2, page 2. Again, I don't, I don't want to be
3 repetitive, but there again is a reference to Ms. Constant
4 moved to Calistoga and specifically now looking at line 26,
5 California, April 1993, and resides there full-time. The same
6 point I just made earlier, I would ask -- carry over to that
7 particular sentence.

8 JUDGE LUTON: Okay. This comes under the head of
9 personal background. It's -- it states the facts as they now
10 exist.

11 MR. FITCH: Um-hum.

12 JUDGE LUTON: She presently lives where she says she
13 lives. I understand that. I don't think that'll --

14 MR. FITCH: Okay.

15 JUDGE LUTON: -- cause any confusion about that
16 aspect of her residence which can receive credit in this
17 proceeding.

18 MR. FITCH: All right. Moving then to page 3,
19 paragraph 7.

20 JUDGE LUTON: Line 7 or paragraph 7?

21 MR. FITCH: Paragraph 7.

22 JUDGE LUTON: All right.

23 MR. FITCH: And I, I would move to strike that
24 entire paragraph as irrelevant to the standard comparative
25 issue.

1 JUDGE LUTON: Well, Mr. Shubert, is any comparative
2 credit sought by anything that's stated here?

3 MR. SHUBERT: Not comparative credit per se, Your
4 Honor, only it, it runs to her personal background --

5 JUDGE LUTON: It certainly does that.

6 MR. SHUBERT: -- education.

7 JUDGE LUTON: It does that, but I think the reaction
8 we get from Willson is that it's irrelevant and irrelevant to
9 what standard comparative issue? If it isn't offered for the
10 purpose of receiving comparative credit, I'll let it stand --

11 MR. SHUBERT: It is not, per se, offered for
12 standard comparative credit --

13 JUDGE LUTON: When you say per se, what, what does
14 that mean?

15 MR. SHUBERT: Well, what I was going to say, Your
16 Honor, is, is I suspect during the course of this proceeding
17 testimony is going to try to be introduced by the other party
18 about activities in the area. And from the standpoint that
19 this is in the area, I think it's relevant to whatever
20 ultimate findings are made by Your Honor with respect to what
21 occurs or what the resident's background in the area has been.

22 MR. FITCH: Well, and that's comparative, Your
23 Honor. It's also conjectural.

24 JUDGE LUTON: It sounds like a contradiction there.

25 MR. SHUBERT: If it will satisfy Your Honor, Your

1 Honor, we will, we will accede to letting it stand only for
2 personal background information.

3 JUDGE LUTON: That's the way that I would be
4 inclined to look at it except for the sentence there, Rohnert
5 Park is only about four miles outside the 1 mV/m contour of
6 the proposed station, under the heading of education. That,
7 that obviously pushes on toward something more than simply
8 showing the witness' educational background. But in any
9 event, with Moonbeam's agreement to have the paragraph and the
10 information contained in the paragraph considered only as part
11 of the witness' background biographical information, I will
12 let the information stand and deny the motion to strike.

13 MR. FITCH: All right. Then, Your Honor, I would
14 move to the next heading, which is Civic Involvement,
15 heading C. Let me, let me, let me explain what I, what I'd
16 like to do here is go ahead and move to strike certain items
17 here, which I feel can be stricken without any voir dire and
18 then move to strike several that I think may require a bit of
19 voir dire, if that's all right with Your Honor.

20 JUDGE LUTON: All right. Let's try it that way.

21 MR. FITCH: Okay. First, starting at line 23,
22 references -- the, the direct case states, "Further, she is
23 and has been since June 1992 a member of the Daughters of the
24 California Pioneers." This is a civic activity which was
25 commenced Post-B cutoff, Your Honor, and for that reason I

1 would move to strike it.

2 JUDGE LUTON: Is that a basis for striking a listed
3 activity or is it a basis for simply according it a reduced
4 weight?

5 MR. FITCH: Your Honor, I, I am making the objection
6 with your same concern on that point. I, I don't believe it's
7 absolutely clear in the Review Board cases whether the law
8 says one can get some credit for Post-B cutoff civic, although
9 very minor, or whether the law says you can't have any civic
10 after B cutoff. I frankly think the Review Board of the
11 Commission has been unclear on this particular point.
12 However, I am making the objection, but I understand the
13 concern and I -- and frankly when the same objection, which I
14 anticipate will be made to some of our civic -- Post-B cutoff
15 civic activities is made, I will note my objection, raising
16 the same points.

17 JUDGE LUTON: All right. I believe that the
18 activity Post-B cutoff is entitled to consideration. I think
19 that's the current state of the law, though the weight given
20 to it is to be reduced. So I will deny the motion to strike
21 on that basis. Next objection.

22 MR. FITCH: All right. Then let me back up then to
23 line 16 and specifically now I'm referring to the reference
24 to, "From 1963-1964, during her years of residence in Sonoma
25 County, Ms. Constant served as a Junior Grey Lady at...

1 Petaluma Hospital, Petaluma, Sonoma County, California." On
2 this I would ask leave for one or two voir dire questions,
3 Your Honor, before I make my objection.

4 JUDGE LUTON: You may proceed.

5 MR. FITCH: Ms. Constant, is Petaluma located
6 outside the 1 mV contour of your proposed station?

7 WITNESS: Yes.

8 MR. FITCH: Your Honor, on, on that grounds I would
9 move to strike it.

10 JUDGE LUTON: Response?

11 MR. SHUBERT: Yes, Your Honor. I think there are a
12 couple of items here. First, I think with testimony we can
13 establish that Petaluma Hospital serves the residents of
14 Calistoga and the residents within the area of the 1 mV
15 contour directly. That people go to that hospital for medical
16 services from the communities within the 1 mV contour.
17 Secondly, I think we can establish as well that if you stand
18 at the hospital, at the Petaluma General Hospital, you can see
19 the transmitter site. It is visually observable. And I think
20 that, that I'm entitled to argue the weight of that. This,
21 again, goes to a question of weight, not whether it should be
22 included or not.

23 MR. FITCH: Your Honor, this is a frozen direct
24 case. They have not, they have not included this information
25 in their direct case. As it stands right now --

1 JUDGE LUTON: Well --

2 MR. FITCH: -- this, this is a, this is a civic
3 involvement outside the 1 mil. It's -- the burden is on the
4 proponent to show the connection with the service area. This
5 has not been done.

6 MR. SHUBERT: But it -- I --

7 MR. FITCH: This is a frozen direct case.

8 MR. SHUBERT: It still goes to weight, Your Honor.

9 MR. SHUBERT: It shouldn't be in there.

10 MR. FITCH: Whether or not there's other evidence in
11 there or not, it goes to weight.

12 JUDGE LUTON: How do you propose, Mr. Shubert, to as
13 the lawyers say, connect this up with -- evidentiary showing.

14 MR. SHUBERT: You'll have to wait and see how the
15 case develops, Your Honor. I can't tell you yet. I may not
16 be able to make -- connect it up, but it is a fact that
17 relates to her background and that she was civically in --
18 Sonoma County is -- Calistoga is located in Sonoma County.
19 She was civically involved in Sonoma County.

20 MR. FITCH: She was civically involved at Petaluma
21 Hospital, Your Honor.

22 MR. SHUBERT: Which is located in Sonoma County, is
23 it not?

24 MR. FITCH: Which is outside the 1 mV.

25 MR. SHUBERT: But it's still within Sonoma County.

1 My, my statement is accurate.

2 MR. FITCH: Well, Your Honor, I believe I have a
3 case here which may shed some light on it.

4 JUDGE LUTON: We give credit for activities within a
5 county or within the service area.

6 MR. FITCH: Here we go.

7 JUDGE LUTON: Go ahead. I'm sorry. You said you
8 had --

9 MR. FITCH: Oh, I'm sorry. I, I didn't, I didn't
10 hear your last statement, Your Honor.

11 JUDGE LUTON: Oh, it, it was a question. I'm
12 wondering what significance Mr. Shubert attaches to the claim
13 that the hospital is in Sonoma County. So what? If it's in
14 -- within the county but without the service area, does it
15 matter that it's within the county?

16 MR. SHUBERT: That is for argument to be made in the
17 conclusions I would submit, Your Honor.

18 JUDGE LUTON: What kind of argument would you make
19 there? On that particular point that might be persuasive?

20 MR. SHUBERT: That the entire concept of, of knowing
21 the needs and interests of the community relates to people
22 within the community, within the service area. And that if
23 you are serving people from within the service area, almost by
24 osmosis you have to have -- some of this has to rub off.
25 Newspapers are circulated which cover the needs and interests

1 in the community.

2 JUDGE LUTON: Wouldn't --

3 MR. SHUBERT: It's a matter of weight though, Your
4 Honor.

5 JUDGE LUTON: It wouldn't make any difference from
6 where you serve those people within the community, whatever
7 the community is, for present purposes, whether you serve them
8 from the county but outside the service area or from the next
9 state.

10 MR. SHUBERT: But it would suggest that there is a
11 better understanding if you're serving from the county than
12 there is from the next state.

13 MR. FITCH: I mean -- Your Honor, I live in Howard
14 County, Maryland, and -- but not in Baltimore, Maryland, and I
15 can tell you what goes on in Baltimore, Maryland. Now, if I
16 lived in Charlotte, North Carolina, I might not be able to do
17 that.

18 MR. SHUBERT: Your Honor, I, I believe I can tell
19 you the law.

20 JUDGE LUTON: It doesn't necessarily follow that
21 you'd be able to tell me what goes on in Baltimore simply
22 because you live in Howard County either. Where are we
23 getting here?

24 MR. FITCH: Well, Your Honor --

25 JUDGE LUTON: The objection -- excuse me. Let me --

1 I don't want to lose sight of the objection that I'm about to,
2 to do here.

3 MR. FITCH: Your Honor, I can -- if, if it would be
4 helpful to you, I've got a recent Review Board case, which I'm
5 -- which I can hand to you if you'd like. It's an Endwell,
6 New York, case, April 16, and in there the Review Board noted
7 Batisti, which was one of the applicants, is not entitled to
8 credit for organizations or activities outside the service
9 area or for those whose nexus to the service area cannot be
10 discerned from the record. He bears the burdens of proceeding
11 and non-persuasion. And it would be my position -- to that, I
12 mean, Your Honor, that that, that has not been met here.

13 JUDGE LUTON: Which leads me back to the question I
14 first asked Mr. Shubert. How do you propose to connect this
15 up?

16 MR. SHUBERT: It says --

17 JUDGE LUTON: You told me that you may or may not be
18 able to.

19 MR. SHUBERT: It says she served at Petaluma
20 Hospital, Petaluma, Sonoma County, California. The record
21 will show in this case that Calistoga is in Sonoma County.
22 The nexus is there.

23 JUDGE LUTON: Is that evidence that you're going to
24 put on?

25 MR. SHUBERT: It will be in the record, Your Honor.

1 JUDGE LUTON: Where is it coming from?

2 MR. SHUBERT: I can adduce it through direct
3 testimony from Mr. Willson if necessary. Or cross-examination
4 from Mr. Willson, because there is a plethora of detail in
5 there that they are going to try to claim for his traveling
6 through Sonoma County.

7 MR. FITCH: Within the 1 mV I might add, Your Honor.

8 MR. SHUBERT: Well, that's not absolutely clear.

9 JUDGE LUTON: I'm going to let this stand and see
10 what kind of evidence comes in. I expect that when you try,
11 Mr. Shubert, to use Mr. Willson there are going to be
12 objections and I'll have another shot at this. For present
13 purposes I'm going to deny the motion to strike and permit it
14 to stand, though I do it with some doubt as to the correctness
15 of that ruling. In any event, that is my ruling. Next
16 objection?

17 MR. FITCH: Your Honor, the next, the next objection
18 I suspect will be the same ruling, but --

19 JUDGE LUTON: That's all right. You make it anyway.

20 MR. FITCH: Yeah. I'd like to get it on the record.
21 It concerns virtually the same kind of -- well, it does
22 concern the same kind of objection, the same kind of concerns
23 and specifically now I'm referring to line 27 on page 3, which
24 is a reference to involvement as a docent at the Terwillager
25 Nature Education Center, which is located in Corte Medera,